IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

CRP.No. 677 of 1994(A)

TLB.16/1986 of TALUK LAND BOARD, BADAGARA
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REVN. PETITIONERS/ASSESSEE NO.1/PETITIONERS:
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1. KURUNGOTTIL EBRAYI, KAYAKKODI,
P.O.KARANTHODE, VADAKARA.

2. BIYATHU, W/O.KURUNGOTTIL EBRAYI,
P.O.KARANTHODE, VADAKARA.

*__**ADDL. PETITIONERS 3 TO 9 IMPLEADED:**__

3. KUNHAMMED, S/O.LATE KARUNGOTTIL EBRAYI, KAYAKKODI,
P.O.KARANTHODE, KUTTIADI, VADAKARA.

4. SARA, D/O.KARUNGOTTIL EBRAYI, THAYYIL VEEDU,
NARIKKATTERI, KUTTIADYI, VADAKARA.

5. SAMEERA, D/O.KARUNGOTTIL EBRAYI, MADATHIL HOUSE,
NADUVANNUR, KOYILANDY.

6. RAMLA, D/O.KARUNGOTTIL EBRAYI, KADAVATH HOUSE,
PALLERI P.O., KOYILANDY.

7. HAMEED, S/O.KARUNGOTTIL EBRAYI, KARUNGOTTIL,
KARANTHODE P.O., KUTTIADI, VADAKARA.

8. MAJEED, S.O. DO. DO.

9. ASHRAF, S/O. DO. DO.

*ADDL. PETITIONERS 3 TO 9 ARE IMPLEADED AS PER ORDER DATED 8.1.2007 IN I.A.NO.3403/06.

BY ADV. SRI.MURALEEDHARAN R.K.
SRI.PARTHASARATHY

RESPONDENTS:
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1. PALATHIL MOIDU, KAYAKKODI,
   VADAKARA.

**2. PALATHIL KUNHABDULLA OF DO. (DIED)

3. TALUK LAND BOARD, VADAKARA.

4. THE TAHSILDAR, VADAKARA.

5. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO
   GOVERNMENT, THIRUVANANTHAPURAM.

<u>ADDL. R6 TO R10 IMPLEADED:**</u>

6. PATHU, W/O.LATE PALATHIL KUNHABDULLA,
   KAYAKKODI, VADAKARA.

7. MOIDU, S/O.LATE P.KUNHABDULLA, KAYAKKODI, VADAKARA.

8. SOOPPY, DO. DO.

9. BASHEER, DO. DO.

10. AISU, D/O. DO.

**ADDL.R6 TO R10 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES
OF DECEASED 2ND RESPONDENT VIDE ORDER DATED 8.3.2007
IN I.A.NO.709 OF 2007

R3 TO R5 BY GOVT. PLEADER MR.SHYSON P.MANGUZHA
R1 ADV. SRI.P.M.MOHAMED ALI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.1031 OF 1994 IN C.R.P.NO.677 OF 1994

DISMISSED

18.8.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P.No.677 of 1994

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Dated: 18th August, 2007

ORDER

The petitioners are assessees under Section 87(7) of the Land Reforms Act. Their contention in the enquiry conducted by the Land Board was that many of the properties which were shown to be in their possession and ownership were not actually in their possession nor did they have any right or ownership over those properties. The Land Board by its order dated 28.7.1992 directed the petitioners to surrender 4.27 acres of land consisting of 1.95 acres in R.S.No.59/2 of Deverkovil desom and 2.32 acres in R.S.No.32/2 of Karantode desom. Naturally the petitioners did not have any grievance about this order since it was their contention that these properties are not in their possession and they are not having any interest over these properties. But when the revenue authorities went over to take possession of these properties, two persons, respondents 1 and 2 herein objected contending that they are having independent rights over these properties. They filed application under Section 85(8). That application was allowed by the Taluk Land Board. The Taluk Land Board under the present order has found that since the extent of 4.27 acres directed to be surrendered is not available with the

petitioners, the assessees, they are bound to surrender the same extent of land from the other lands owned by them. According to the Taluk Land Board, mistake had been committed by the revenue officials in noting the correct survey numbers of the properties. The correct survey number of the property in the possession of the petitioners was R.S.Nos.59/3C and not 59/2. It is similarly stated that the correct survey number of the property in the possession of the petitioners is R.S.No.34/5.6 and not R.S.No.32/2. The Land Board therefore has taken the view that the petitioners have to surrender an equal extent of properties and has by the impugned order directed the petitioners to surrender 4.27 acres comprising of the following properties:

	Desom	R.S.No.	Extent	Classification
Vadakara	Akal	7/2.3	2.64 ¾	OD land
Taluk	Karantode	36/2	1.27 ¼	Coconut garden
		34/6	0.35 ¼	”

			4.27 acres	
			=========	

According to the Land Board merely because claim petitions filed in

respect of the properties originally ordered to be surrendered have been allowed, the petitioners liability to surrender will not cease.

2. Heard Mr.Parthasarathy, counsel for the petitioners and Mr.Shyson P.Manguzha, learned Government Pleader.

3. Mr.Parathasarathy would make submissions on the basis of the various grounds raised in the C.R.P. He drew my attention to the judgment of Bhat,J. in **Mathew Mathai v. State of Kerala** (1981 KLT Sh.Notes Case No.110, p.59), a decision which had been relied on by the Taluk Land Board. He also drew my attention to another judgment of the very same learned Judge reported in the very same volume of the K.L.T., i.e., **Ayyappan Pillai v. Taluk Land Board** (1981 KLT Sh.Notes Case No.145, p. 79) and submitted that the correct legal position has been clarified by the learned Judge in **Ayyappan Pillai's** case.

4. The learned Government Pleader would submit that the order of the Taluk Land Board has been given within the contours of the Land Board's powers when cases are reopened under Section 85(8) as explained by this court in Mathew Mathai v. State of Kerala (supra). No option statement was submitted by the petitioners opting to surrender alternate sites and therefore the Board cannot be

blamed for directing the petitioners to surrender lands from out of the areas admittedly in their possession.

5. Having considered the rival submissions made at the Bar, I am of the view that the Taluk Land Board is not justified in ignoring the implications of the order allowing the claim petitions submitted by respondents 1 and 2 on the petitioners liability to surrender any land as excess. Though the judgment in **Mathew Mathai v. State of Kerala** (supra) would tend to approve the view taken by the Taluk Land Board, it is clear from the judgment of the very same learned Judge in **Ayyappan Pillai's** case (supra) that decisions and conclusions under the original order of the Taluk Land Board which have a bearing on the claim made by the claimants under Section 85 (8) will necessarily have to be set aside. In the instant case both the items of land in respect of which the claims filed by respondents 1 and 2 have now been upheld were reckoned with in the account of the petitioners. When it is seen that they were not liable to be so reckoned with, necessarily a redetermination is warranted as to the petitioners' liability for surrendering lands as in excess of ceiling limits. I set aside the impugned order and direct the Taluk Land Board to take a fresh decision as to the petitioners' liability for

surrendering any land being in excess of the area. Opportunity will be given by the Taluk Land Board to the petitioners for substantiating their contentions. If it is ultimately found that the petitioners are liable to surrender any land, petitioners will be afforded opportunity to file option statement.

The C.R.P. is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**